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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE

SHAN E. VITARIUS and
JESSICA J. VITARIUS,

CHAPTER 13
CASE NO. 09-35840(CGM)

Debtors.

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**MEMORANDUM OF LAW IN SUPPORT OF THE DEBTORS' MOTION
PURSUANT TO 11 U.S.C. §§506(a) AND 506(d)**

PRELIMINARY STATEMENT

SHAN E. VITARIUS and JESSICA J. VITARIUS (the "debtors"), submits this Memorandum of Law in support of their motion for an Order pursuant to 11 U.S.C. § 506(a) and 506(d) determining the value of a mortgage on non-residential real property and voiding a judicial lien.

STATEMENT OF FACTS

The facts upon which the debtors, SHAN E. VITARIUS and JESSICA J. VITARIUS, rely are set forth in the Motion and affidavit previously submitted to the Court which they incorporate by reference, as if set forth herein.

ARGUMENT

THE SECURED STATUS OF A JUDICIAL LIEN MAY BE DETERMINED BY THE APPLICATION OF 11 U.S.C. 506

The law is clear on the issue that judicial liens are to be treated the same as any other secured lien under 11 U.S.C. §506. In re Scherr, 12 B.R. 258 (B.Ct.S.D.N.Y. 1981); In re Leibowitz, 147 B. R. 341 (B.Ct.S.D.N.Y. 1992); In re Butler, 196 B.R. 329 (B.Ct.W.D.Va. 1996).

Accordingly, as there is no equity the real property to which the judicial lien may attach, the lien may be valued at zero under 11 U.S.C. §506(a) and disallowed and declared void under 11 U.S.C. §506(d).

CONCLUSION

For all of the foregoing reasons, the Court should grant the debtors' motion requesting the entry of an Order pursuant to 11 U.S.C. §§506(a) and 506(d); and for such other and further relief as seems proper to this Court.

Dated: Wappingers Falls, New York
July 28, 2010

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